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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,123	02/05/2002	Jeffrey L. Robbins	Mo6968/MD-00-130-PU	5763
157	7590	06/28/2004	EXAMINER	
BAYER POLYMERS LLC 100 BAYER ROAD PITTSBURGH, PA 15205			GOFF II, JOHN L	
			ART UNIT	PAPER NUMBER
			1733	
DATE MAILED: 06/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/068,123

Applicant(s)

ROBBINS ET AL.

Examiner

John L. Goff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12 and 16-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. This action is in response to the arguments received 4/5/04.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

3. Applicant's election of Group I, Species I, Sub-Species I-A (claims 1-10 and 13-15) in the reply filed on 4/5/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It is noted in the arguments of the response applicant indicates non-elected claims 11, 12, and 16-31 have been cancelled. However, the listing of claims submitted by applicant in the response identifies claims 11, 12, and 16-31 as withdrawn. Thus, the claims have not been cancelled.

Information Disclosure Statement

4. As to the previous comments concerning the Information Disclosure Statement, it is noted the specification lists patents (on e.g. pages 6, 7, etc.) that were not submitted on the Information Disclosure Statement submitted by applicant on 2/5/02 and as such the examiner has not considered the patents unless cited on a PTO-892 form.

Claim Rejections - 35 USC § 102

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogdany (U.S. Patent 4,423,103).

Bogdany disclose a process for producing a patterned polyurethane backed tufted carpet. Bogdany teaches providing a carpet, applying a polyurethane mixture to the back side of the carpet, passing the coated carpet under a first doctor blade to spread the polyurethane mixture evenly across the surface of the carpet, passing the coated carpet under a second doctor blade that is patterned to form a pattern in the polyurethane mixture, and passing the coated carpet through an oven to cure the polyurethane mixture (Figures 1 and 4 and Column 1, lines 32-47, 51-53, and 60-68 and Column 2, lines 1-11 and 58-61). Bogdany teaches the polyurethane mixture comprises polyisocyanate, polyol, and other materials including clay, calcium carbonate, silica, etc. (i.e. non-Newtonian thickeners). Bogdany further teaches the polyurethane mixture may include alumina trihydrate, antidegradants, etc. (Column 3, line 41 and Column 4, line 4 and Column 5, lines 8-11). It is noted the claims require a patterned doctoring device, e.g. blade/bar, and the second doctoring device, i.e. "rake", taught by Bogdany is considered the same as both have the same structure.

Claim Rejections - 35 USC § 103

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holeschovsky et al. (WO 00/37737) in view of any one of Stidham (U.S. Patent 4,354,810), Satiar (GB 2160790), Davis et al. (U.S. Patent 5,045,375), or Bogdany.

Holeschovsky et al. disclose a polyurethane backed tufted carpet. Holeschovsky et al. teach the polyurethane backing mixture comprises at least one polyisocyanate component, at least one isocyanate-reactive component, at least one non-Newtonian thickener, and at least one filler (Page 10, lines 1-5, 13-14, and 18-19 and Page 11, lines 23-24). Holeschovsky et al. teach the non-Newtonian thickener may be inorganic having a specific surface area of $10 \text{ m}^2/\text{g}$ or greater (Page 12, lines 4-7). Holeschovsky et al. teach the inorganic thickener is present in an amount of from 0.25 to 20 parts per 100 parts of isocyanate-reactive ingredients (Page 12, lines 16-18). Holeschovsky et al. teach the inorganic non-Newtonian thickener is selected from precipitated calcium carbonate, clay minerals, fumed silica, etc. (Page 12, lines 8-13).

Holeschovsky et al. teach the inorganic non-Newtonian thickener has a mean particle size less than 0.3 microns (Page 12, lines 27-30 and Page 13, lines 1-5). Holeschovsky et al. teach the inorganic non-Newtonian thickener forms aggregates and/or agglomerates (Page 12, lines 25-26). Holeschovsky et al. teach the viscosity of the polyurethane mixture at a first high rate of shear is within 20% of the viscosity of a reactive polyurethane of the same formulation but devoid of non-Newtonian thickener, and is at least three times the viscosity of the non-Newtonian thickener-devoid composition at a second, lower rate of shear (Table 1 and Page 20,

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lines 24-26 and claim 11). Holeschovsky et al. teach a process for applying the polyurethane mixture to the tufted carpet comprising providing a tufted carpet (the carpet may have a cured or uncured latex or polyurethane precoat), applying the polyurethane mixture to the back side of the tufted carpet, passing the coated tufted carpet under a doctor blade to spread the polyurethane mixture across the surface of the carpet, optionally applying a woven secondary backing to the coated tufted carpet, and passing the coated tufted carpet through an oven to cure the polyurethane mixture (Figures 1-3 and Page 1, lines 7-11 and Page 5, lines 19-32 and Page 6, lines 1-11 and Page 7, lines 12-15 and Page 19, lines 17-23 and Page 26, lines 7-10 and claim 25). Holeschovsky et al. are silent as to using the doctor blade (or adding an additional patterned doctor blade) to form a pattern in the polyurethane mixture, it being noted Holeschovsky et al. teach depending upon the type of carpet produced additional doctor blades, etc. may be used (Page 7, lines 12-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the polyurethane backed tufted carpet taught by Holeschovsky et al. with a pattern using a patterned doctor blade as it was well known in the art to form polyurethane backed carpets with a pattern (from a patterned doctor blade) to give the carpet non-slip/skid properties as shown for example by any one of Stidham, Satiar, Davis et al. or Bogdany (Bogdany is described above in paragraph 5).

Stidham discloses a process for producing a patterned polyurethane backed tufted carpet. Stidham teaches providing a tufted carpet, applying a polyurethane mixture to the back side of the tufted carpet, passing the coated tufted carpet under a doctor roller having a pattern or a doctor blade having removable patterned blades to form a pattern in the polyurethane mixture, and passing the coated tufted carpet through an oven to cure the polyurethane mixture (Figures

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1-8 and Column 1, lines 16-28, 41-48, and 66-68 and Column 2, lines 1-2 and Column 3, lines 10-22 and 58-68 and Column 4, lines 1-2, 15-26, 34-38, and 53-57 and Column 5, lines 11-17, 44-47, and 64-67 and Column 6, lines 3-4, 28-30, and 33-35). Satiar and Davis et al. disclose a method of forming adhesive (e.g. polyurethane or latex) backed tufted carpets wherein the adhesive is patterned (e.g. by using a patterned doctor blade) to give the tufted carpets non-slip/skid properties (Page 1, lines 4-9, 22-31, 45-51, 57-59, and 80-81 of Satiar and Column 1, lines 9-11 and Column 2, lines 57-61 and Column 3, lines 4-6, 9-17, and 20-23 and Column 4, lines 21-26 and Column 5, lines 9-12 of Davis et al.).

Regarding claims 6 and 7, while Holeschovsky et al. do not specifically disclose amounts of fumed silica or precipitated calcium carbonate as described in the claims, it is noted the polyurethane mixture described by Holeschovsky et al. is the same as that described and claimed by applicant such that one of ordinary skill in the art at the time the invention was made would have readily expected the polyurethane mixture taught by Holeschovsky et al. to have the amounts of fumed silica or precipitated calcium carbonate required by claims 6 and 7.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to experimentally determine/optimize these amounts as a function of the properties of the product produced as doing so would have required nothing more than ordinary skill and routine experimentation.

8. Claims 1-10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stidham in view of Holeschovsky et al.

Stidham is described above in paragraph 7. Stidham while teaching that the tufted carpet is backed with a polyurethane mixture is silent as to (and is not limited to) any particular

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polyurethane composition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the polyurethane mixture taught by Stidham any of the well known and conventional polyurethane mixtures in the tufted carpet backing art such as the polyurethane mixture shown for example by Holeschovsky et al. (whose benefits include application without dripping or running) as only the expected results would be achieved. Holeschovsky et al. is described above in paragraph 7.

Regarding claims 14 and 15, Stidham is silent as to (and is not limited to) applying the patterned polyurethane backing to any particular tufted carpet structure, e.g. a carpet having a precoat or a carpet having a woven secondary backing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the tufted carpet taught by Stidham any well known and conventional tufted carpet in the art such as the tufted carpet structures shown for example by Holeschovsky et al. as only the expected results would be achieved.

Regarding claims 6 and 7, while Stidham as modified by Holeschovsky et al. do not specifically disclose amounts of fumed silica or precipitated calcium carbonate as described in the claims, it is noted the polyurethane mixture described by Stidham as modified by Holeschovsky et al. is the same as that described and claimed by applicant such that one of ordinary skill in the art at the time the invention was made would have readily expected the polyurethane mixture taught by Stidham as modified by Holeschovsky et al. to have the amounts of fumed silica or precipitated calcium carbonate required by claims 6 and 7. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to experimentally determine/optimize these amounts as a function of the properties of the product

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produced as doing so would have required nothing more than ordinary skill and routine experimentation.

9. Claims 3-10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdany as applied in paragraph 5 above, and further in view of Holeschovsky et al.

Bogdany as applied above teaches all of the limitations in claims 3-10 and 13-15 except for the particulars of the polyurethane mixture. However, it is noted Bogdany teach that the tufted carpet is backed with a polyurethane mixture comprising inorganic non-Newtonian thickeners, and Bogdany is not limited to any particular polyurethane composition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the polyurethane mixture having inorganic non-Newtonian thickeners taught by Bogdany any of the well known and conventional polyurethane mixtures having inorganic non-Newtonian thickeners in the tufted carpet backing art such as the one shown for example by Holeschovsky et al. (whose benefits include application without dripping or running) as only the expected results would be achieved. Holeschovsky et al. is described above in paragraph 7.

Regarding claims 14 and 15, Bogdany as applied above teaches all of the limitations in claims 14 and 15 except for applying the patterned polyurethane backing to any particular tufted carpet structure, e.g. a carpet having a precoat or a carpet having a woven secondary backing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the tufted carpet taught by Bogdany any well known and conventional tufted carpet structures in the art such as the tufted carpet structures shown for example by Holeschovsky et al. as only the expected results would be achieved.

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Regarding claims 6 and 7, while Bogdany as modified by Holeschovsky et al. do not specifically disclose amounts of fumed silica or precipitated calcium carbonate as described in the claims, it is noted the polyurethane mixture described by Bogdany as modified by Holeschovsky et al. is the same as that described and claimed by applicant such that one of ordinary skill in the art at the time the invention was made would have readily expected the polyurethane mixture taught by Bogdany as modified by Holeschovsky et al. to have the amounts of fumed silica or precipitated calcium carbonate required by claims 6 and 7. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to experimentally determine/optimize these amounts as a function of the properties of the product produced as doing so would have required nothing more than ordinary skill and routine experimentation.

Response to Arguments

10. Applicant's arguments filed 4/5/04 have been fully considered but they are not persuasive.

Regarding Bogdany alone and in view of Holeschovsky et al. applicant argues,

"It is noted that the Examiner has characterized the rake of this reference as "a second doctor blade that is patterned to form a pattern in the polyurethane mixture" (see page 6 of the Office Action dated February 5, 2004, section 10, second paragraph, lines 4-5 therein). Applicants respectfully submit that this is an improper characterization of the Bogdany reference and its disclosure!" and "Applicants respectfully submit that it is improper for the rake of the Bogdany reference to be considered a "doctor blade". It is evident from the reference that Bogdany was clearly aware of "doctor blades", yet he selected the term "rake" to describe the portion of the device which forms the pattern in the froth. If it was the intent of the Bogdany reference for the rake to be a "doctor blade" with a patterned edge, why was it not described in such terms?"

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It is noted claims 1 and 2 require a patterned doctoring device, e.g. blade/bar, and the second doctoring device, i.e. "rake", taught by Bogdany is considered the same as both have the same structure, it being further noted that while Bogdany does not refer to the "rake" as a "doctor blade with a patterned edge" one of ordinary skill in the art would readily appreciate that the "rake" described by Bogdany is the same.

Regarding Bogdany alone and in view of Holeschovsky et al. applicant further argues,

"Applicants respectfully submit that it is not disclosed or suggested by the Bogdany et al reference that one is able to control (i.e. gauge) the thickness of the froth and form a pattern in the froth simultaneously with one device, regardless of what that device is called (e.g. doctor blade, rake, etc.)."

This argument is not commensurate in scope with what is claimed, as the claims merely require a doctoring device to form a pattern.

Regarding Bogdany alone and in view of Holeschovsky et al. applicant further argues,

"Even if it would be proper to consider the rake with tines of the Bogdany reference "equivalent" to a doctor blade with a patterned edge or having a removable attachment which is patterned, the process of this reference does not disclose or suggest applying a second puddle of froth after the doctor blade and before the rake!"

This argument is not commensurate in scope with what is claimed, as the claims do not require a second puddle of froth after the doctor blade and before the rake.

Regarding Bogdany alone and in view of Holeschovsky et al. applicant further argues,

"Furthermore, Applicants submit that the presently claimed invention is not anticipated by the Bogdany reference as this reference does not disclose or suggest non-Newtonian thickeners as required by the presently claimed invention. The statement by the Examiner that "Bogdany teaches the polyurethane mixture comprises polyisocyanate, polyol, clay (or calcium carbonate, silica, etc, i.e. non-Newtonian thickeners), and filler ..." is simply not correct. The clay, calcium carbonate, silica, and other such components disclosed as suitable for the polyurethane mixture by this reference are not non-Newtonian thickeners! One of ordinary skill in the art would readily recognize and understand this."

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Applicants specification discloses examples of non-Newtonian thickeners include precipitated calcium carbonate, finely divided clays, precipitated and “fumed” silicas, and the like (Page 7, lines 19-22), and applicants specification discloses examples of filler materials include calcium carbonate, ground limestone, dolomite, alumina trihydrate, etc. (Page 7, lines 4-6 and Table 1) (Emphasis added). Further claim 1 requires a mixture comprising at least one non-Newtonian thickener and at least one filler, it being noted the claim does not require the non-Newtonian thickener and filler to be different materials. Bogdany teaches the polyurethane mixture comprises polyisocyanate, polyol, and other materials including clay, calcium carbonate, silica, alumina trihydrate, etc. Thus, Bogdany at the minimum teaches a polyurethane mixture including clay, calcium carbonate, silica, etc. wherein these materials are non-Newtonian (as evidenced by applicants specification and further page 12, lines 8-10 of WO 00/37737) and filler such that the claimed limitations are met.

Regarding Holeschovsky et al. in view of any one of Stidham, Satiar, Davis et al., or Bogdany applicant argues,

“As set forth above, the Holeschovsky et al reference is directed to a process for face-up coating of carpet backs with a polyurethane composition. It is respectfully submitted that one of ordinary skill in the art would not be motivated to substitute a patterned doctor blade from any of the secondary references for the unpatterned doctor blade of the Holeschovsky et al reference in an effort to form a pattern in the polyurethane backing of a greige good.” and “Applicants respectfully submit that one of ordinary skill in the art is well aware of the difficulty and problems with trying to run a polyurethane system on a conventional face-up coating line for carpet backing for the reasons as discussed in the Holeschovsky et al reference. The skilled artisan is also aware of the difficulty in forming, and particularly in maintaining well defined patterns in foam backings of polyurethane on carpet backs even when the system or line is operated in a face-down manner (i.e. the reverse side of the greige good is facing up). In light of this information, one of ordinary skill in the art would simply not be motivated to substitute any of the patterned doctor blades or bars from any of the secondary references for the unpatterned doctor blade in the process of the Holeschovsky et al reference which is a face-up coating process!”

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It is well known and conventional in the art to provide a coating (e.g. of polyurethane or latex) backed carpet with a pattern (from e.g. a patterned doctor blade) to give the carpet non-slip/skid properties, and Holeschovsky et al. are not limited to and do not teach away from any particular, i.e. patterned or non-patterned, coating such that it would have been obvious to modify Holeschovsky et al. in this manner for the above reasons. Stidham, Satiar, Davis et al., and Bogdany are cited merely as examples of this technique, it being noted that while Satiar does not specifically disclose polyurethane backed carpets the reference is exemplary of the well known and conventional technique of providing a coating backed carpet with a pattern to give the carpet non-slip/skid properties.

Regarding Stidham in view of Holeschovsky et al. applicant argues,

“As described above, the Stidham reference broadly discloses that a doctor roll may be modified with attachable smooth or patterned distribution means to produce a pattern in foamed sheet materials. This apparatus and method do not require any particular foamed fluid composition. Rather, suitable foamed fluid compositions broadly described by this reference include styrene-butadiene synthetic rubber latex and polyurethane. No specific compositions details for any these types of foams are disclosed in this reference, aside from what is set forth in the only working example.” and “One of ordinary skill in the art would not consider the Holeschovsky et al reference particularly pertinent to improving the process of forming patterns in the foam (polyurethane or latex) backing on carpet substrates. This reference does not disclose any information concerning the formation of patterns in the foam layers of carpet backing. Why would one of ordinary skill in the art believe or expect that the polyurethane compositions disclosed by Holeschovsky et al are as good as, much less better than, the polyurethane compositions disclosed in any of the other numerous references describing such compositions?”

It is noted Stidham discloses broadly using latex or polyurethane compositions wherein no specific composition details are disclosed in the reference aside from the working example disclosing a latex composition including calcium carbonate, a known non-Newtonian thickener (as evidenced by applicants specification and further page 12, lines 8-10 of WO 00/37737) and filler. Thus, it would have been obvious to one of ordinary skill in the art to use any well known

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and conventional polyurethane composition in the same art such as that shown for example by Holeschovsky et al. as only the expected results would be achieved. As to applicants results, it is noted the example of Stidham shows it desirable to include a non-Newtonian thickener in the backing composition such that the results are not persuasive.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is **(571) 272-1216**. The examiner can normally be reached on M-F (7:15 AM - 3:45 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John L. Goff
June 18, 2004



JEFF H. AFTERGUT
PRIMARY EXAMINER
GROUP 1300